

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
Petitioner)
)
-VS-) Civil No. 13-11530-PBS
) Pages 1 - 28
BRIAN MAHONEY,)
)
Respondent)

**PRETRIAL CONFERENCE - FINAL
VIA VIDEO**

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts 02210
June 17, 2020, 9:38 a.m.

LEE A. MARZILLI
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P R O C E E D I N G S

THE CLERK: The Court calls Civil Action 13-11530, United States v. Brian Mahoney. Could counsel please identify themselves.

MR. CALLAHAN: Good morning, your Honor. Patrick Callahan for the United States.

MR. TENNEN: Good morning. Eric Tennen on behalf of Mr. Mahoney.

THE COURT: Thank you.

And it's good to see Mr. Mahoney. You're at Wyatt?

THE DEFENDANT: Well, I'm doing okay, but there's some serious medical issues that have just come forward in my situation. So I just want the Court and everyone to be aware that I have a serious kidney infection right now that's started in the stomach about four or five months ago. And I saw the doctors on Saturday, and they said they'd give me medication that they hope works, but they don't know if this is going to work, and I've been in excruciating pain for the past three to four weeks. So I'm taking medication, but with this kidney infection, they don't know what's going to happen. I don't even know if I'm going to survive this.

THE COURT: Are they kidney stones?

THE DEFENDANT: No, they're not. This is a bacterial infection that has gone from stomach; it started all the way down to the kidneys. This has been going on for five to six

1 months. I just found out about it Saturday.

2 THE COURT: I'm sorry to hear that. I'm sorry to hear
3 that. It took a while to get you up here because for a while,
4 with the COVID, they weren't transporting anyone, so I hope --

5 THE DEFENDANT: Yeah. Well, they said the most
6 important part right now is, am I going to survive? I know
7 kidney infections can be very brutal and you can possibly be
8 killed from that. So they're going to try. The doctor said
9 Monday, "We don't know if this medication is going to work.
10 We're going to try it."

11 He did ask me the famous question everyone has been
12 asking me, "When are you going home?" And hopefully --

13 THE COURT: So, as I understand it, I set up this
14 status hearing partly to get you up here so that you could be
15 with your attorney and with the various experts -- maybe only
16 one expert, Mr. Tennen? -- but, in any event, maybe two, and
17 certainly to think about a release plan.

18 So let me start with Mr. Callahan. We're going to
19 have a trial or a hearing in mid-July. Hopefully Mr. Mahoney
20 is well enough to be able to do that. What do you need at this
21 point? What do you anticipate will happen then?

22 MR. CALLAHAN: Your Honor, so the government will be
23 ready for the July 16 hearing. Right now, not having seen
24 Mr. Mahoney's expert's report, we're not exactly sure if we'll
25 need anybody else; but right now we expect at least the one

1 expert or the one psychologist from Butner who will testify, if
2 the Court allows, will testify by VTC or Zoom, provided
3 everyone is willing to do that.

4 THE DEFENDANT: No, I would object. I object to that
5 myself. You've got to come into the courtroom. You know the
6 rules, Patrick Callahan.

7 THE COURT: All right, wait. Just hold on a second.

8 So you think you'll have one expert, is that it? And
9 then we can discuss how that person appears.

10 MR. CALLAHAN: Yes, your Honor, at least one expert,
11 and that brings me to the second point, which is just getting
12 the report from Mr. Mahoney's doctor, Dr. Pivovarova. We've
13 not received that yet. We would like to receive that at the
14 latest June 26. Mr. Mahoney has been in the district since
15 May 20, so, you know, by the 26th, that will have been in five
16 to six weeks.

17 THE DEFENDANT: I will object to that, Judge. This
18 has been going on for nine months. I'm not waiting again for a
19 continuance. July 16 and I won't take it. If you don't want
20 to give me that hearing, I'll go to the First Circuit. But I'm
21 going to tell you one other thing, Judge, and I want everybody
22 to listen to me: Under 4246, I am only supposed to be
23 temporarily held until I'm competent to go to trial or until my
24 charges have been disposed of. Judge Saris, my charges have
25 been disposed of. And there's a guy that made this rule. You

1 might even remember him; you might not remember him. His name
2 is Calvert Magruder. He was on the hearing who created this
3 whole entire Serious Offense Act in 1942 that went forward.
4 But my charge has been dismissed seven years ago. I am
5 supposed to be released by law. And by the First Circuit
6 Judge Magruder, who also, there were seven other judges, in the
7 First, Second, Sixth, the Seventh, the Eighth, the Ninth, and
8 the District of Columbia, and it was the First Circuit
9 Judge Magruder who made the determination that under 4246, you
10 are held only until you're competent to go to trial or until
11 your charges have been dismissed according to law. That's the
12 end of this case. That's over. It's done.

13 THE COURT: All right, thank you.

14 Mr. Tennen, so what's left? Do you have an expert
15 report yet?

16 MR. TENNEN: I don't have an expert report yet, Judge.
17 We were waiting for records, and she was only able to meet with
18 Mr. Mahoney on Friday. We set up a Zoom hearing, and she
19 talked to him this past Friday, I think? Yeah.

20 THE COURT: How long did she get a chance to talk to
21 him?

22 MR. TENNEN: We talked for probably a good three
23 hours.

24 THE COURT: Oh, good, it was a good long meeting.
25 Well, that's great.

1 MR. TENNEN: No, she doesn't need to talk to him
2 again. So that was on Friday. She's been talking to the
3 social worker about getting some information from the social
4 worker. So I'm hoping to get a report in two weeks, so it's
5 not next week because it took a while to set up the call. It's
6 just taking a little bit. I talked to Mr. Callahan a little
7 bit about the timing of stuff and things that I think might be
8 in the report, so I tried to give him as much of a heads-up as
9 possible.

10 THE COURT: So give me a deadline because he needs a
11 chance to review it with his expert before the July hearing.

12 MR. TENNEN: I know he does. The other thing I
13 thought about is that I have to get the report to Mr. Mahoney
14 also first before I can turn it over. And I can't visit him,
15 so I have to do it all by mail, or I can try and at least set
16 up a call with him and go over it on a call. So I have to try
17 and do that before I --

18 THE COURT: Can I say that -- we've been working on
19 that in the court -- that you have the opportunity to set up a
20 Zoom attorney call only, which is probably what you did on
21 Friday. You just need to -- Wyatt has been incredibly
22 responsive.

23 MR. TENNEN: Yes.

24 THE COURT: So they do have a -- not all of them are,
25 but we've not had a problem yet with Wyatt, but it's subject to

1 availability. So could you book it and make sure you have it
2 in advance? I need to -- I'm in agreement with Mr. Mahoney.
3 I'd really like to get this done on July 16. It's been too
4 long.

5 THE DEFENDANT: I won't take a continuance on it. I'm
6 not going to do that.

7 THE COURT: Excuse me. I need to get the report to
8 the government. That's part of the rules too.

9 So when do you think she could do the report by?

10 MR. TENNEN: She told me July 2, which is in two
11 weeks.

12 THE COURT: Well, let me put it this way: If you can
13 get it to the government by July 2, but that can't be when you
14 get it to Mr. Mahoney, and then get it to the government only a
15 week beforehand.

16 MR. TENNEN: Okay.

17 MR. CALLAHAN: And, your Honor, that's also the 4th of
18 July week, which the government is willing to work, but we're
19 going to be having people at Butner who might not even be there
20 over the holiday weekend. It does pinch the government. And
21 if the government is going to have an opportunity to write a
22 supplement because the last review that the government did, you
23 know, as required by statute, was November, 2019. He's not due
24 to be reviewed again until this coming October. So they sped
25 it up, but we will need some time to both review it, and then

1 there may be a response or a supplement to what was written.

2 THE DEFENDANT: Judge --

3 THE COURT: Hold on, Mr. Mahoney. It's my turn. What
4 I'd like to do is have their supplement, just straight up a
5 supplement. You don't have to wait for the report to get the
6 supplement. And then if you want to respond to it, then it's a
7 shortened piece of work. In other words, I have no problem
8 with even just responding to it testimonially, you know, when
9 the person testifies, or if it's a day beforehand, which would
10 be preferable so that Mr. Tennen can see it.

11 So I think while I do understand it's July 4th week --
12 July 4 or July 2 is what you said?

13 MR. TENNEN: Whatever that Wednesday is. I'm checking
14 real quick.

15 MR. CALLAHAN: Wednesday is the 1st.

16 THE COURT: So it should be the 1st because the 3rd is
17 a federal holiday. So if you can get it to them by the 1st at
18 noon so that he can then shoot it over to people -- and I don't
19 know who it is, I don't know how long it would be -- and then a
20 response could come in within, say, a day or two before the
21 hearing so Mr. Tennen can at least read it beforehand.

22 THE CLERK: Our hearing is the 16th of July, Judge,
23 so --

24 THE COURT: What day of the week is that?

25 THE CLERK: That's a Thursday.

1 THE COURT: All right, so how about if the government
2 gave a supplementation in response, if you choose to -- you're
3 not even required to -- by the 14th, but certainly the person
4 can testify to it.

5 Now, let's talk about -- so now that's a way of
6 exchanging reports. So whether or not it's in person or not,
7 let me just say this: The court is starting to reopen. Okay,
8 it is starting to reopen. That said, I do understand that
9 traveling long distances is an issue.

10 Where is your expert, Mr. Tennen? Where does she
11 live?

12 MR. TENNEN: So she is local, but she had also
13 requested to appear by video because she is expecting in
14 September, and her doctor had advised her to avoid, you know,
15 high-risk areas.

16 THE COURT: Well, what we're trying to do with the
17 courthouse is -- and I don't know that I want to rule on this
18 yet -- we're trying to do it so that everybody is socially
19 distanced. I assume Mr. Mahoney will want to be up in the
20 courtroom? Is that right?

21 THE DEFENDANT: Yes, Judge. I got tested, and I'm
22 negative. I gave it to my attorney, so I'm all set. I can go
23 into the courtroom, but everybody else has to get their test to
24 find out if they have the virus. But, again, I have the right
25 to cross-examine witnesses in the courtroom. I'm not going to

1 do it by videotape, no way around that.

2 THE COURT: Let me just say this: I am going to try
3 and do that. We are trying to figure these things out. I
4 think we have a way, Mr. Tennen, and I'm hoping the technology
5 is there, so that you do not have to be close to Mr. Mahoney,
6 that there will be like an audio feed.

7 Maryellen, we'll have to figure out. We're hoping --
8 we've ordered the technology. I don't know if it's arrived
9 yet. But if that isn't available by the 16th, we're just going
10 to have to work out a way that you could talk to him. I know
11 you can Zoom with him in advance of the trial, like a few days
12 beforehand, that kind of thing, but otherwise it would have to
13 be downstairs probably in the Marshals Service. They claim
14 there's negative air pressure there, but still it's small
15 quarters. So I don't know what you want to do, and you may
16 want to --

17 MR. TENNEN: I'm happy to be present in the courtroom.
18 My concern is more him than me, to be honest, and, you know, if
19 we need to talk during the hearing, how we do that in a way
20 that's safe for Mr. Mahoney. I mean, for me too, but I'm more
21 concerned for him.

22 THE COURT: I'm totally flexible on this, but I have
23 to tell you that we've had no in-person hearings pretty much,
24 and so we're just opening up in July, and we're not really
25 quite sure how to make sure everyone is safe, so I'm working

1 through that. But I do understand Mr. Mahoney wants to be
2 there, and to the extent feasible, I will honor that, unless he
3 gets sick or unless one of us gets sick. I will be there,
4 hopefully.

5 Now, what do we do about these experts because both of
6 them, I guess -- is your expert from North Carolina? Is that
7 it?

8 MR. CALLAHAN: Yes, your Honor, the government's
9 expert is in North Carolina. If he came, he would have to
10 quarantine here and then quarantine when he went back. So
11 that's just going to be -- aside from just the day of being
12 here for the hearing, that would be a very significant issue.
13 So if it can be done by Zoom, that's what the government is
14 requesting.

15 THE COURT: Well, I don't understand this 14-day
16 quarantine. Is that a matter of North Carolina law?

17 MR. CALLAHAN: If he went back, he told me that when
18 he went back, he would have to quarantine. And in terms of
19 what he would have to identify, you know, for his children to
20 go to schools or childcare, he would have to check off that he
21 had traveled out of the state, and then they would be forced to
22 quarantine for an additional number of weeks after he returned.
23 So it's a significant -- I mean, he's willing to travel and
24 he's done that before, but this would be, A, traveling on a
25 plane during coronavirus, and, B, the effect it would have on

1 him, both physically and the consequences of having to
2 quarantine after he returns would be significant. So it would
3 be --

4 THE COURT: Well, we don't have to make a decision
5 right now. Let me just say that. I mean, I don't know the
6 answer. Right now Massachusetts is doing really much better
7 than North Carolina right now.

8 MR. CALLAHAN: Yes, yes.

9 THE COURT: We're pretty terrific, and it's coming
10 down and it's much safer. That's not necessarily true, by the
11 way, at Wyatt. In some of the units in Wyatt there's an issue.
12 And there's always a chance, and I just want to put it out
13 there, that --

14 Are you in quarantine, Mr. Mahoney?

15 THE DEFENDANT: I've been in quarantine since
16 November 1, 2020, absolutely. I've been locked up, Judge, in
17 the SHU for 16 straight months 24 hours a day, seven days a
18 week. So I'm not going to continue to be in lockdown and allow
19 doctors not to give me medication.

20 THE COURT: Well, right now it's a good thing because
21 there are other parts of Wyatt that are --

22 THE DEFENDANT: Judge, this is punishment. It's not a
23 good thing. I'm supposed to get care and treatment.
24 Twenty-four hours a day seven days a week in a cell, that's
25 punishment.

1 THE COURT: Let me just say that you don't want to be
2 with anyone who has coronavirus, or the Marshals won't
3 transport you in.

4 THE DEFENDANT: Oh, I understand that, Judge, but this
5 is 16 consecutive months (Inaudible) I've been in the SHU.
6 That is problematic to me, to my health and to my -- now I have
7 serious issues with my kidneys.

8 THE COURT: I am worried that whether or not you're
9 getting -- was he getting treatment at Butner?

10 THE DEFENDANT: I'm not getting anything here, Judge,
11 zero.

12 THE COURT: And you won't at Wyatt. That was one of
13 the issues.

14 THE DEFENDANT: Mr. Callahan said equally problematic --

15 THE COURT: Mr. Mahoney, no. I want to hear from
16 Mr. Tennen about this --

17 THE DEFENDANT: -- he's saying it's a problem --

18 THE COURT: Mr. Callahan, was he getting treatment at
19 Butner?

20 MR. CALLAHAN: He was, your Honor.

21 THE COURT: And I know he probably isn't getting it at
22 Wyatt, so I do want to minimize his stay there, just because
23 it's a holding facility, not necessarily -- but is there mental
24 health treatment that one can get there? I don't know if you
25 get the level of treatment you do at Butner but --

1 THE DEFENDANT: I haven't seen anybody, Judge Saris,
2 not a soul.

3 THE COURT: In Wyatt?

4 THE DEFENDANT: Just a doctor for my kidneys, that's
5 it, because I'm in excruciating pain. I'm bedridden right now.

6 THE COURT: Yes, that's terrible.

7 Mr. Tennen, do you know whether or not it makes sense
8 for him to try and get a mental health support system for him
9 at Wyatt?

10 MR. TENNEN: They have some limited things available,
11 and last time he was there he was having contact with mental
12 health, and I thought it was actually a pretty positive
13 relationship. I think the problem is --

14 THE COURT: Is what?

15 MR. TENNEN: Is coronavirus. I think what's available
16 is limited because of the virus now.

17 THE COURT: Do you want me to request it?

18 MR. TENNEN: I'm happy to. Just I'm not sure that
19 they're able to do it now because of the virus. That's all I'm
20 saying.

21 THE COURT: Because if I don't request, we don't know,
22 so --

23 MR. TENNEN: He can correct me if I'm wrong, but last
24 time he was there, there was someone that he spoke to a couple
25 times. And, Brian, I thought you got along well with her and

1 that was a good thing to have.

2 THE COURT: That's good for everybody because it's
3 really, I've heard from many people, not just Mr. Mahoney, that
4 in this lockdown world of coronavirus how lonely and isolating
5 it is for the prisoners. It's really difficult. So why don't
6 we put in a request for mental health treatment at Wyatt
7 because this could be another month and a half really, or a
8 month, a month anyway.

9 So, Maryellen, could we just put in a request to the
10 Marshals that he get mental health treatment, even if it's
11 socially distanced mental health treatment. I think I'm glad
12 Mr. Mahoney pointed that out.

13 So, Mr. Tennen, so what do you anticipate at the
14 hearing on the 16th? Your expert testifying, either in person
15 or Zoom.

16 MR. TENNEN: Yes, I anticipate that. I have the
17 social worker working with her. I don't think she's necessary
18 for testimony, but I can have her available.

19 THE COURT: As I've said a thousand times, I am eager
20 to work out something, if in fact there is a plan, and if in
21 fact Mr. Mahoney is taking his meds, and if in fact -- as you
22 know, last time around we came close to it, and then neither
23 side was willing to say "release him." I'm ready to release
24 him as soon as I get the green light that there's a way to do
25 it.

1 THE DEFENDANT: Judge Saris, right now, if I may,
2 there is no green light right now. As Mr. Callahan said, Wyatt
3 is a non-medical center facility, and therefore I don't get any
4 medication. That's number one.

5 Number two, ten months ago was the last time I'd
6 gotten any medication, again, and like I said --

7 THE COURT: Are you not getting medication that you're
8 supposed to now?

9 THE DEFENDANT: You don't get anything at Wyatt,
10 absolutely not. Mr. Callahan has said that in his last motion
11 January 6 that I'm not getting anything, and yet I'm here
12 again. And you even said it, Judge, in the paperwork and the
13 transcript that I have. So I don't have to inform you again,
14 but I'm not getting it.

15 THE COURT: This medication, Mr. Tennen, do you know?

16 THE DEFENDANT: I'm supposed to be at Devens Medical
17 Center. That's number one.

18 MR. TENNEN: I don't know about Wyatt right now, what
19 he's getting or not getting.

20 MR. CALLAHAN: Your Honor, I think we knew before he
21 was going that BOP does not have any ability to tell Wyatt what
22 to do. So when the Marshals bring him to Wyatt, it's sort of
23 out of BOP's hands. But I think everyone knew going in he was
24 not going to get the medication because many of the medications
25 he was on aren't on their formulary.

1 THE COURT: Well, can I say, I didn't know that, that
2 he wasn't getting any medications. I sure didn't know that
3 he's getting nothing. So I think we need to have a -- why
4 don't you get from Butner what he should be getting, and then
5 we're going to pass it on to Wyatt and tell them they need to
6 get it or something that's equivalent because that's what saves
7 him. That's the only thing that brings him --

8 THE DEFENDANT: They refuse the Klonopin, Judge, so
9 that's not even going to be an issue there. They won't give me
10 that at all.

11 THE COURT: I don't know what's appropriate, but I do
12 know the only thing that brings him into calmness are some of
13 these medications, and I've always said to him "Take your
14 meds."

15 THE DEFENDANT: You're right. I did give Eric Tennen
16 a piece of paper that showed from 2003 to 2010, before I got
17 civilly committed, I was on Xanax, I was on oxycodone, and I
18 was on Seroquel 50 milligrams. So I was already in a facility
19 getting medications. So everyone keeps saying, "He refuses
20 treatment, he refuses medication." Long before you even knew
21 who I was, I was taking medications from 2003 to 2010, and Eric
22 Tennen has that record.

23 THE COURT: That's great, but we need to get him on
24 meds so that by the time he hits the hearing, that's not an
25 issue.

1 THE DEFENDANT: I'm not going to take the meds here,
2 Judge, so that's the bottom line, so there will be another
3 issue --

4 THE COURT: Well, if you refuse meds --

5 THE DEFENDANT: I told you what I want, Judge Saris.
6 I told you over and over again. You're not qualified. Let me
7 see your Ph.D. and doctoral. Then you can tell me. But right
8 now, I'm not going to cooperate at all right now. Do You
9 understand that? I just want you to be aware. You've got to
10 cooperate with me. I don't have to cooperate with you.

11 THE COURT: Mr. Tennen, this is proving my point. If
12 you could try and figure out what he should be taking from
13 psychiatry.

14 THE DEFENDANT: I'm not taking any medication. Nobody
15 can force me after ten years. I will tell you right now,
16 you're going to (Inaudible) I'm going to instruct the judges on
17 what you did. Under 4246, my charges have been dismissed. I'm
18 going to seize Susan Goldberg on you and make sure that you're
19 impeached from that bench because my charges have been
20 dismissed, Judge. So you can look me right in the face. I'll
21 take my glasses off and I'll tell you right to your face:
22 You're going to be impeached, Honey.

23 THE COURT: So, Mr. Tennen --

24 THE DEFENDANT: -- no medications again (Inaudible).

25 THE COURT: Our hearing can't be this way, so --

1 THE DEFENDANT: -- anybody but me, Patti Saris.
2 You're going to get impeached, Honey.

3 THE COURT: So could we possibly just see what we need
4 to happen through the psychiatrist?

5 MR. TENNEN: It's a psychologist but --

6 THE COURT: Or possibly I could pay for a
7 psychiatrist? Somebody needs to prescribe him something.

8 MR. TENNEN: I'm happy for Wyatt to prescribe whatever
9 Butner was prescribing. I don't know how to make that happen,
10 and then I don't know how to make him take it.

11 THE COURT: Was it being taken? I thought it was
12 being taken at Wyatt. Wasn't it, Mr. Callahan?

13 THE DEFENDANT: No, it was not --

14 MR. CALLAHAN: No, your Honor. Your Honor, if I could
15 speak with Mr. Mahoney being quiet just for a moment. No, they
16 have limitations at Wyatt where they cannot give -- and the
17 government has no ability to control that -- where they cannot
18 provide the same things that they can provide at Butner, which
19 is why the government initially had said we thought he was
20 better off at Butner.

21 THE COURT: At Butner, was he taking meds?

22 MR. CALLAHAN: Yes.

23 THE DEFENDANT: No, I was not because I was not.

24 MR. CALLAHAN: He was, and we have the records, you
25 Honor. We'll show that he was taking Seroquel --

1 THE DEFENDANT: October 19, 2019, that was it. They
2 stopped it on me, all of it.

3 THE COURT: So why don't you check out, see what he
4 was on at Butner.

5 MR. CALLAHAN: Certainly, your Honor, certainly.

6 THE COURT: Okay. So we need to make sure that
7 whatever happens in July is calm, so --

8 THE DEFENDANT: Judge Saris, you're breaking the law.
9 4246, I'm supposed to be here -- hold on -- I'm supposed to be
10 here until I'm mentally competent to be released or my charges
11 have been dismissed. I will take this up with Ms. Susan
12 Goldberg, and I will guaranty you this much: I know law, and
13 you're not going to put me under any induced antipsychotic
14 medication. I want you to get ahold --

15 Maryellen, can you give her the trial date in 1987
16 because Patti Saris should understand how serious the
17 antipsychotic medications are, and then she can understand that
18 I have the right to put it in my body. This is a decade, been
19 going on a decade. This is the end of the case.

20 THE COURT: Thank you, thank you.

21 All right, Mr. Tennen, you'll have a chance to meet
22 with Mr. Mahoney and talk to him in the interim?

23 MR. TENNEN: Yes, I'm trying. And to be fair to him,
24 it has been a stressful several months.

25 THE COURT: He's sick right now with a kidney disease,

1 so --

2 MR. TENNEN: All that, transportation and with
3 lockdowns and stuff, he's had a rough couple of months just
4 dealing with, you know, being in prison during coronavirus.

5 THE COURT: I've got to believe that he's going to
6 want to testify at the hearing as well?

7 THE DEFENDANT: Absolutely.

8 THE COURT: Yes, I assume that. So in scheduling
9 this -- Maryellen, what do we have blocked, how many hours?

10 THE CLERK: I blocked off the entire day.

11 THE COURT: Oh, good. That's great. So if you and
12 Mr. Callahan could -- I assume that I'm going to hear at least
13 from, Mr. Tennen, your psychologist, possibly a social worker,
14 and for sure Mr. Mahoney, and then I'm assuming I will hear
15 from the government's expert. And anybody else?

16 THE DEFENDANT: If I may, Patti Saris, if I may say
17 something else?

18 THE COURT: No. Mr. Callahan I'm asking a question.

19 MR. CALLAHAN: Your Honor, right now, based on what we
20 know, we just expect the psychologist, but that could obviously
21 change, depending on what we see in the report from
22 Dr. Pivovarova. Right now, your Honor, it's just the
23 psychologist. Depending on what we see in Mr. Mahoney's
24 expert's report, there could be the need to call somebody else,
25 but I won't know that until we receive the report.

1 THE COURT: And for the record, Mr. Mahoney just left
2 the room, to my knowledge. I don't know whether he's still in
3 the room or whether he's just not on the camera. So I think he
4 feels very frustrated by this proceeding, and I'm a little
5 worried about what it's going to look like in July. So,
6 Mr. Tennen, maybe you can sort of do what you can.

7 MR. TENNEN: I'm trying, I really am. It's not been
8 easy for him. It's not been easy -- I mean, just making this
9 happen has been tough because it's all over Zoom and stuff like
10 that, but --

11 THE COURT: You could go down there, or is that too
12 dangerous for you?

13 MR. TENNEN: Again, my concern is less for me than
14 others. I just don't think Wyatt is allowing attorney visits
15 regardless, as far as I know.

16 THE COURT: I see.

17 MR. TENNEN: That's my understanding. I could be
18 wrong about that. I just think they're not letting anyone in
19 the facility. That's why they're doing the Zoom calls.

20 THE COURT: And it may be dangerous to do that. So,
21 in any event, I don't know what will happen on July 16, but
22 unfortunately I think I haven't seen him in a really long time,
23 and he's very angry right now, and I had not understood he
24 wasn't taking his medications, and is refusing them
25 effectively.

1 MR. TENNEN: Well, I don't think there's anything to
2 take at Wyatt. Let's start with that, you know.

3 THE COURT: Well, there is if I order it. I mean, the
4 question is whether he would take it or not.

5 MR. CALLAHAN: Yeah, I think he's said he will not.

6 MR. TENNEN: Yeah, but he says that a lot, and then he
7 does it. So I don't know. I don't know what he would do.

8 THE COURT: Could you find out what he was taking at
9 Butner and communicate that to Mr. Tennen because we need to
10 have a --

11 MR. CALLAHAN: And, Eric, if I could just say one
12 thing. I'd be happy to do that. What I'll do is, I'll send it
13 to Mr. Tennen, Judge Saris, and I can copy and send it to
14 Maryellen as well, if that's going to be helpful for your
15 purposes of issuing any orders or suggestions, or whatever
16 process you want to see take place.

17 THE COURT: I could order him transmitted to Devens,
18 but he's had a problem at Devens before.

19 MR. CALLAHAN: Correct.

20 MR. TENNEN: I can't make Wyatt give him anything
21 either. Even if I send a list of medications, I can't --

22 THE COURT: No, no, give it to me if you want to do
23 it, and then I will order Wyatt to try and provide it.

24 MR. TENNEN: I'm happy for Mr. Callahan to, you know,
25 communicate through Maryellen and let you know what it was; and

1 if you think you are able to accomplish that, I don't have a
2 problem with that. I don't think I can do anything about it.

3 THE COURT: Well, what do you want to do? Help me
4 here because clearly he can't act like what he just acted like
5 at the hearing. He needs something that brings it down a
6 level.

7 MR. TENNEN: Two things: One is, if your Honor thinks
8 that you can get a message through the Marshals to Wyatt about
9 giving him medication, I would say go for it, and Mr. Callahan
10 can do that.

11 THE COURT: I'm happy to try.

12 MR. TENNEN: Yes, okay. And the second one is, I do
13 think that if we get to the hearing date and we're in the
14 courtroom, it will help him feel a little better about things
15 as opposed to, you know, what he's been going through. So I
16 think he'd be calmer if we were there in person actually doing
17 this.

18 THE COURT: Do you think his brother could come in or
19 someone from the family to help him feel supported?

20 MR. TENNEN: I hadn't actually talked to his brother
21 about that. I can. I guess, if you're saying the public can
22 come in, I can see about that.

23 THE COURT: Well, I'm planning on doing it in the open
24 courtroom.

25 MR. TENNEN: No, I know that. I am still trying to --

1 because the state system is so different than the federal
2 system, but it sounds like you guys are allowing the public to
3 come in also.

4 THE COURT: Maybe. We have to figure this out.

5 If he isn't calm, the level of security that will be
6 necessary -- I've had -- I can't remember how long ago it was
7 we had another issue with him just exploding in the courtroom.
8 Isn't that right?

9 MR. CALLAHAN: Yes, your Honor.

10 THE COURT: And I just -- we need this to be a calm,
11 cool proceeding, for his benefit too. So if I can get him on
12 meds, if he'd agree to take it, why don't we find out. Who's
13 this?

14 THE GUARD: He removed himself.

15 THE COURT: That's right, he did.

16 THE GUARD: He closed this out. I just dealt with
17 him. Now I'm just coming back here to make sure everything was
18 all set.

19 THE COURT: Thank you.

20 THE GUARD: I calmed him down. He felt bad, so he
21 removed himself.

22 THE COURT: Are you an officer at Wyatt?

23 THE GUARD: I am, your Honor. This is Sydney Cohen.

24 THE COURT: Are you? A long time ago. Well, hello.
25 In State Court or Federal Court?

1 THE GUARD: In the Federal Court, the Marshals
2 downstairs.

3 THE COURT: Oh, yes. So the question really is that
4 we're trying to debate here is, if we found out what meds he
5 was on at Butner, is that something Wyatt could give him? Do
6 you know?

7 THE GUARD: I don't believe Klonopin is given here.
8 But that's for Medical to answer. That's not me. I don't want
9 to answer for them. So they can reach out to Medical here at
10 Wyatt, and they can reach out to Butner and see exactly what
11 he's on. When I picked him up at the airport to bring him
12 here, he did come with medications, but I don't know what
13 because it's sealed up. He traveled with medications.

14 THE COURT: Okay, so, Mr. Tennen, can you look into
15 that and then just let me know what to do because I can issue
16 orders to try and get him appropriate medication. So can you
17 let me know that within, let's say, a week?

18 MR. TENNEN: Sure. He also takes non-psychiatric
19 medications, and I assume that's what he probably had to travel
20 with, stuff for medical issues.

21 THE COURT: Oh, all right, all right.

22 Okay, well, this will be challenging, but I'm hoping
23 we can get it done. Okay, thank you very much.

24 MR. CALLAHAN: And, your Honor, could I ask one
25 question if you're going to end things today? On the 16th, if

1 the government's expert is not able to appear over video, it's
2 going to create a conflict where for him to travel here, he's
3 not going to be able to get here -- if he was ordered to and if
4 your Honor directed him, he would not be able to be here on the
5 16th. So I just wanted to put that out there. He can appear
6 by video on the 16th for sure, but if there's going to be
7 travel required, he would have to put it over to the next week
8 or the week after, obviously at a time that would work for the
9 Court and Mr. Tennen.

10 THE COURT: Well, why don't we do this: As we get
11 closer, let's figure that out. For sure I'm going to hear
12 plaintiff's case first, so that might consume much of the day.
13 And, Mr. Tennen, if you can let us know. I mean, if I'm going
14 to let your expert appear by Zoom, I'm going to let his expert
15 appear by Zoom. And Mr. Mahoney can object. And I don't even
16 know what the rules are there, but it's better, I think, than
17 putting it off. He's just so agitated about this. And it is
18 the middle of a pandemic, and North Carolina is not doing well,
19 right now. So there it is.

20 Okay, well, we will stand in recess, and I'm still
21 really shooting hard for the 16th. And I'm really eager for
22 him not to be the way he just was at the hearing. It won't be
23 good for any of us if he can't just calmly deal with it and
24 testify.

25 So, Mr. Tennen, you're a genius at these things. I

1 was very pleased when you agreed to take the case. Thank you
2 very much. You're maybe the fourth or fifth attorney on the
3 case, so -- is that right?

4 MR. TENNEN: Yes. You give me a little too much
5 credit sometimes, I think. I mean, there's only so much I can
6 do.

7 THE COURT: I call you the miracle worker, so I'm
8 hoping that you can sort of help us through this.

9 Thank you very much. We'll leave the meeting right
10 now. Thank you.

11 MR. CALLAHAN: Thank you, your Honor.

12 THE COURT: Thank you, Wyatt. Thank you.

13 THE GUARD: Thank you, your Honor.

14 THE COURT: Bye-bye.

15 (Adjourned, 10:12 a.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 28 inclusive, was recorded by me stenographically at
the time and place aforesaid in Civil Action No. 13-11530-PBS,
United States of America v. Brian Mahoney, and thereafter by me
reduced to typewriting and is a true and accurate record of the
proceedings.

Dated this 20th day of June, 2020.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER